

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**C.W., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Houston, TX, Employer**

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**Docket No. 16-0858  
Issued: April 3, 2017**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 22, 2016 appellant, through counsel, filed a timely appeal from a February 1, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence following the February 1, 2016 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

## **ISSUE**

The issue is whether appellant established that his claim should be expanded to include the additional conditions of internal derangement of shoulders, psychogenic pain, chronic pain syndrome, and major depressive disorder.

## **FACTUAL HISTORY**

On August 31, 2012 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2012 he sustained a neck injury as a result of a motor vehicle accident in the performance of duty. He stopped work on August 29, 2012.<sup>4</sup> OWCP accepted his claim for cervical and lumbar sprains. It paid continuation of pay (COP) and wage-loss compensation benefits.

On October 18, 2012 the employing establishment removed appellant from employment because his one-year term appointment had ended.

Appellant was placed on the periodic rolls, effective April 29, 2013.

On May 8, 2014 appellant was examined by Dr. Ramesh Parikh, a Board-certified psychiatrist and neurologist, for a psychiatric evaluation due to appellant's complaints of feeling increasingly depressed. Dr. Parikh opined that appellant's depression was related to his physical problems which began on August 28, 2012 following the work-related motor vehicle accident. He explained that appellant underwent considerable financial stress and felt overwhelmed while waiting approval for his workers' compensation claim. Appellant also described feelings of helplessness because he had to depend on other people to drive him to and from medical appointments. Upon examination, Dr. Parikh reported that appellant was overly apprehensive, intense, felt hopeless and helpless about the injury, and doubtful about future prospects of returning to work. He observed diminished concentration due to depression and decreased psychomotor activity. Dr. Parikh also noted that appellant's judgment and insight were impaired. He diagnosed depression secondary to chronic medical problems and physical pain.

OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. James E. Butler, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued to suffer residuals of his August 28, 2012 employment injury and the extent of his disability.

In a May 19, 2014 report, Dr. Butler discussed appellant's history and reviewed the medical records. He noted appellant's complaints of pain in the neck, lower back, bilateral shoulders, right knee, right leg, and right foot. Dr. Butler provided objective examination findings of tenderness over appellant's lower paraspinous muscles of the cervical and lumbar spine and limited range of motion. He noted no sensory or motor defects. Examination of appellant's upper extremity revealed normal sensation and grip strength. Dr. Butler diagnosed cervical and lumbar spine degenerative joint disease with no radiculopathy. He reported residuals of cervical and lumbar tenderness and decreased range of motion. Dr. Butler also noted

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<sup>4</sup> Appellant has a previously accepted right ankle sprain for a September 7, 2010 injury under File No. xxxxxx873.

some subjective paresthesia in appellant's upper extremities, but no evidence of sensory or motor deficits. He authorized appellant to return to work with restrictions and outlined appellant's restrictions in a duty status report (Form CA-17). On June 26, 2014 Dr. Butler also performed a functional capacity evaluation, which revealed that appellant could work at sedentary physical demand level.

In reports dated July 14 to November 14, 2014, Dr. Louis Train, a Board-certified family practitioner, discussed that on August 28, 2012 appellant was driving a motor vehicle for the employing establishment when he was broadsided by another motor vehicle. He noted appellant's accepted conditions of cervical and lumbar sprains and reviewed appellant's diagnostic examination reports. Upon examination, Dr. Train observed spasms in the cervical paravertebral muscles upon palpation and positive thoracic outlet test bilaterally. Examination of appellant's shoulders revealed loss of volume and tenderness of the supraspinatus tendon. Dr. Train reported tenderness at the right sacroiliac joint and tenderness and swelling of the right piriformis muscle in appellant's lower back. Straight leg raise testing was positive bilaterally. Dr. Train further noted decreased pinprick sensation in appellant's C4 to T1 dermatomes bilaterally. He related that a magnetic resonance imaging (MRI) scan examination of the neck implied that these findings were consistent with thoracic outlet syndrome. In July 14 and August 12, 2014 reports, Dr. Train requested that appellant's conditions be expanded to include lumbar disc disorder without myelopathy, cervical disc disorder without myelopathy, and internal derangement of both shoulders. He opined that appellant's injuries occurred when he was injured at work.

By letters dated November 19, 2014 and January 9, 2015, OWCP advised appellant that it had received his physician's reports regarding newly diagnosed conditions in relation to his August 28, 2012 employment injury, but that they were insufficient to establish causal relationship. OWCP afforded appellant 30 days to submit additional medical evidence.

In a January 8, 2015 impartial medical examination report, Dr. Grant McKeever, a Board-certified orthopedic surgeon, related appellant's complaints of pain primarily in his neck and low back that continued to bother him since his injury some 2½ years ago. He accurately described the August 28, 2012 employment-related motor vehicle accident and discussed the medical treatment appellant received. Dr. McKeever reviewed appellant's history and conducted an examination. He reported that during the examination appellant exhibited a very antalgic gait using a cane in his right hand and had difficulty getting up and down from a chair and the examination table. Dr. McKeever noted that appellant complained of pain and withdrew whenever he touched appellant's neck and upper back area. He also observed limited range of motion of the cervical spine. Neurological examination revealed intermittent grip strength and sensation throughout the fingers and thumb. Dr. McKeever noted intermittent weakness of the anterior tibialis and extensor hallucis longus bilaterally. He commented that when appellant left the office building he observed from the window in his office that appellant carried his coat and back braces, walked at a brisk pace without any noticeable limp or abnormal gait for probably 20 to 25 yards, and quickly got into his car with no evidence of any difficulties.

Dr. McKeever reported diagnoses of acute cervical strain, resolved, superimposed on long-standing degenerative disc changes, and acute lumbosacral strain, resolved, superimposed on long-standing degenerative disc disease. He opined that appellant was capable of working full-time without restrictions and that no further medical treatment was needed to treat

appellant's injuries sustained in the August 2012 motor vehicle accident. Dr. McKeever indicated that there were no residuals of appellant's accepted conditions. He explained that appellant's numerous complaints were primarily "psychophysiologic in origin and not a result of trauma sustained in a motor vehicle accident in August of 2012." Dr. McKeever provided a work capacity evaluation form (Form OWCP 5C) indicating that appellant could return to full duty.

Dr. Novarro C. Stafford, a Board-certified anesthesiologist, treated appellant and, in narrative reports dated January 13 to April 17, 2015, noted appellant's accepted conditions of cervical and lumbar sprains. He described the August 28, 2012 employment injury and the medical treatment he received. Dr. Stafford related appellant's complaints of pain and weakness in both shoulders and pain, weakness, numbness, and tingling in both upper and lower extremities. He noted that appellant related he continued to be depressed because of the difficulty in attempting to get some recovery for his work-related injury. Upon examination, Dr. Stafford observed moderate tenderness on palpation of the anterior and posterior rotator cuff areas of appellant's shoulders and muscle spasm of both trapezius areas extending to appellant's neck and head. Range of motion was decreased on active and passive movement and strength was also decreased on grip of both hands. Dr. Stafford reported that appellant requested an expansion of his work-related claim to include internal derangement of the shoulders. He diagnosed cervical herniated disc, unresolved, lumbar back sprain, unresolved, and internal derangement of both shoulders bilaterally, unresolved.

On January 14 and 21, 2015 appellant underwent a nerve conduction velocity study and electromyography (NCV/EMG) by Dr. Stafford which demonstrated a grossly unremarkable examination of the lower extremities. Testing of the upper extremity revealed severe left median sensorimotor neuropathy at the wrists and moderate right median sensorimotor neuropathy at the wrists.

In a decision dated April 22, 2015, OWCP denied appellant's request to expand his claim to include internal derangement of the shoulders, psychogenic pain, chronic pain, chronic pain syndrome, and major depressive disorder.<sup>5</sup> It found that the medical evidence of record did not support expansion of appellant's accepted conditions. OWCP noted that, in his January 28, 2015 impartial medical examination report, Dr. McKeever concluded that appellant's subjective complaints were not a result of the August 28, 2012 employment injury.

On May 5, 2015 OWCP received appellant's request, through counsel, for a telephone hearing before an OWCP hearing representative. A hearing was held on November 16, 2015. Counsel alleged that because Dr. McKeever's specialty was in orthopedic surgery he lacked the credentials to provide an opinion on whether appellant sustained psychological conditions, specifically psychogenic pain, chronic pain, chronic pain syndrome, and major depressive disorder, causally related to his work injury. Appellant described in detail the August 28, 2012 motor vehicle accident and the medical treatment he initially received. He indicated that he had complained about his shoulders hurting, but the emergency room physician informed him that his shoulder pain was coming from his neck. Appellant also noted that his psychological symptoms had been present since the work injury.

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<sup>5</sup> OWCP had initially issued a decision denying expansion of the claim on April 6, 2013, but it was returned as undeliverable. OWCP reissued the decision on April 22, 2013 to reflect appellant's updated address.

In October 9 and November 6, 2015 reports, Dr. James Key, an orthopedic surgeon, related that he had examined appellant a month previously for accepted conditions of cervical strain and lumbar sprain. He described how appellant was injured in a motor vehicle accident while he worked for the employing establishment. Dr. Key reviewed the medical treatment that appellant received, including various diagnostic examinations, and noted that appellant had a two-level disc herniation in his cervical and lumbar spines that required physical therapy. He reported that appellant's injuries occurred while driving his mail truck and opined that "this is a work-related injury." In the November 6, 2015 report, Dr. Key indicated that he had requested that internal derangement of the shoulders and internal disc displacement be included as accepted conditions. Dr. Key concluded that appellant could not return to work.

Dr. Kevin Williams, an orthopedic surgeon, also treated appellant and in an October 14, 2015 report noted that appellant injured his neck on August 28, 2012 during the course of his employment. He related that appellant had seen a spine specialist and wanted to avoid surgery at all costs. Dr. Williams reported that he would reevaluate appellant in six to eight weeks.

In a December 7, 2015 narrative report, Dr. Mical Samuelson Duvall, an anesthesiologist, noted a date of injury of August 20, 2012 and indicated that appellant still complained of neck and lumbar pain and headaches. He provided range of motion findings of appellant's lumbar and cervical spine on physical examination. Straight leg raise testing was positive. Dr. Duvall reported that neurological examination demonstrated decreased sensation to the right upper extremity from C5 through C7 dermatomes and decreased sensation in the left lower extremity from L4-5 and L5-S1. He diagnosed sprain in the lumbar region and neck and lumbar pain.

Appellant submitted an August 21, 2014 follow-up psychiatric evaluation report by Dr. Parikh who related that appellant had received pain management treatment, but still experienced depression and pain. Dr. Parikh noted that appellant felt guilty and self-conscious for staying at home while his wife worked and earned money. Appellant was also depressed due to his physical limitations, which made him feel helpless. Dr. Parikh opined that appellant was definitely depressed with some neurovegetative symptoms and sleep disturbance.

By decision dated February 1, 2016, an OWCP hearing representative affirmed the April 22, 2015 denial decision. He determined that the special weight of the medical evidence rested with Dr. McKeever's January 8, 2015 impartial medical examination report, wherein he determined that appellant's request for expansion of the claim should be denied as the claimed conditions were not caused by appellant's employment injury.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>6</sup> To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting causal relationship.<sup>7</sup> Causal relationship is a medical issue and the medical evidence

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<sup>6</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>11</sup>

### ANALYSIS

OWCP accepted that appellant sustained cervical and lumbar sprains due to a motor vehicle accident that occurred in the performance of duty on August 28, 2012. Appellant's treating physician Dr. Train later claimed that appellant sustained additional conditions and requested that the claim be expanded to include psychogenic pain, chronic pain syndrome, major depressive disorder, and bilateral shoulder derangement as they were causally related to the August 28, 2012 work injury. Appellant has the burden of proof to establish that his claimed conditions were causally related to his employment injury.<sup>12</sup> The Board finds that the medical evidence of record is insufficient to establish additional work-related conditions.<sup>13</sup>

Dr. Parikh conducted a psychiatric evaluation of appellant and, in reports dated May 8 and August 21, 2014, noted that appellant was overly apprehensive, intense, felt hopeless and helpless about the injury, and doubtful about future prospects of returning to work. He opined

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<sup>8</sup> *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>10</sup> *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>11</sup> *Larson*, The Law of Workers' Compensation § 1300; *K.S.*, Docket No. 16-404 (issued April 11, 2016).

<sup>12</sup> *Supra* note 4.

<sup>13</sup> While OWCP denied appellant's request to expand his claim based on the special weight of Dr. McKeever's January 8, 2015 impartial medical examination report, the Board notes that there was no conflict in medical opinion on the relevant issue of whether appellant's claim should be expanded to include bilateral shoulder pain and psychological conditions. In his May 19, 2014 report, Dr. Butler noted that appellant could return to work with restrictions. He did not disagree with Dr. Train's report nor opine on whether appellant's claim should be expanded to include internal derangement of shoulders, psychogenic pain, chronic pain syndrome, and major depressive disorder. As there was no conflict in medical opinion between Dr. Butler and Dr. Train regarding whether appellant sustained additional conditions as a result of the August 28, 2012 employment injury, the Board finds that Dr. McKeever's report constitutes a second-opinion report and is not entitled to the special weight of the medical evidence.

that appellant's depression was "tied to his physical problems which began August 28, 2012 following the accident in a company vehicle while he was working." While in general terms, Dr. Parikh supported a finding that appellant's emotional condition was consequential to his physical injuries, his opinion was not sufficiently rationalized. He explained that appellant experienced financial stress while waiting for his workers' compensation injury to be approved and felt helpless because he had to depend on other people to drive him to and from medical treatments. Dr. Parikh diagnosed depression secondary to chronic medical problems and physical pain.

Dr. Parikh failed to provide an unequivocal, rationalized explanation as to how appellant's diagnosed psychological conditions resulted from or were a consequence of the August 28, 2012 employment injury.<sup>14</sup> He did not explain how appellant's accepted cervical and lumbar strains could have consequently caused his depression and chronic pain syndrome. The Board has found that medical evidence is of limited probative value if it contains a conclusion regarding causal relationship, but does not offer any rationalized medical explanation on the issue of causal relationship.<sup>15</sup> Accordingly, Dr. Parikh's report is insufficient to establish that appellant sustained psychological conditions as consequences of his August 28, 2012 employment injury.

In a November 12, 2014 letter, Dr. Train again requested that OWCP upgrade appellant's diagnoses to include psychogenic pain, chronic pain syndrome, major depressive disorder, and generalized anxiety disorder. He opined that "these additional diagnoses are a direct result of the injury sustained in his work-related accident." Dr. Train's reports are conclusory and offer no supporting medical rationale to explain how these diagnosed conditions were a consequence of the accepted injury. The Board has found such conclusory opinions insufficient to establish causal relationship.<sup>16</sup>

Appellant also alleged that he sustained additional physical injuries causally related to the accepted employment injury. In an August 12, 2014 report, Dr. Train described that on examination appellant had loss of volume and tenderness of the supraspinatus tendon of his shoulders, as well as pain, tingling, and numbness running down appellant's arm. He requested that the accepted conditions be expanded to include "internal derangement of both shoulders which was caused by the motor vehicle accident as described above."

Although Dr. Train stated that appellant's bilateral shoulder condition was caused by the August 28, 2012 employment injury, he failed to provide any medical rationale explaining how the accepted injury caused or contributed to his bilateral shoulder injury.<sup>17</sup> The need for a rationalized medical explanation is particularly important in this case because appellant was not treated for any bilateral shoulder symptoms until almost two years after the August 28, 2012 employment-related motor vehicle accident. Similarly, in October 9 and November 6, 2015 reports, Dr. Key requested that the accepted conditions be expanded to include internal

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<sup>14</sup> See *J.C.*, Docket No. 10-165 (issued September 23, 2010).

<sup>15</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>16</sup> *Id.*

<sup>17</sup> See *L.M.*, Docket No. 16-188 (issued March 24, 2016); *B.T.*, Docket No. 13-138 (issued March 20, 2013).

derangement of the shoulders, but provided no medical rationale for his opinion. The Board has held that medical opinions which contain no rationale or explanation are of little probative value.<sup>18</sup>

Dr. Stafford treated appellant and, in narrative reports dated January 13 to April 17, 2015, he related that appellant requested for his claim to be expanded to include internal derangement of his bilateral shoulders. He did not provide an opinion regarding causal relationship; he merely communicated appellant's belief that his claim should be upgraded. The Board has found that an employee's belief of causal relation does not establish such a relationship.<sup>19</sup>

While OWCP denied appellant's request to expand his claim based on the special weight of Dr. McKeever's January 8, 2015 impartial medical examination report, the Board has reviewed his report as a second opinion.<sup>20</sup> Dr. McKeever found that appellant's accepted conditions of cervical and lumbar strains had resolved, that appellant was capable of working without restrictions, and that no further medical treatment was needed for the injuries sustained in the August 2012 motor vehicle accident. He found appellant's numerous complaints to be psychophysiologic in origin and not the result of trauma from the employment injury. Therefore, the report of Dr. McKeever fails to support appellant's claim.

The Board therefore finds that appellant has failed to meet his burden of proof to expand the accepted conditions of his claim to include internal derangement of the shoulders, psychogenic pain, chronic pain syndrome, or major depressive disorder.

On appeal counsel asserts that the decision was contrary to fact and law. Appellant, however, has not submitted a rationalized medical report showing that he sustained work-related conditions other than those already accepted. The mere fact that a condition manifests itself or is worsened during an employment period does not raise an inference of causal relationship between the two. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.<sup>21</sup> The Board finds that appellant did not meet his burden of proof to expand the accepted conditions of his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to expand his claim to include the additional conditions of internal derangement of shoulders, psychogenic pain, chronic pain syndrome, and major depressive disorder.

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<sup>18</sup> *D.B.*, Docket No. 16-010 (issued July 14, 2016).

<sup>19</sup> *See P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>20</sup> *See supra note 13*; *see also R.H.*, Docket No. 11-1467 (issued December 14, 2011).

<sup>21</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).



**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board